



ONLINE MEDIATION – TOOL FOR DISPUTE RESOLUTION DURING LOCKDOWN

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Abstract. Article reviews the development process and stages of online mediation. Online Dispute Resolution and online mediation became even more important tool due to pandemic situation in whole world, than ever before. Therefore, article aims to discuss advantages and risks for online mediation. Article provides main characteristics of traditional mediation and their link with online mediation tools.

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Introduction

On March, 2020, World Health Organization announced COVID-19 as a pandemic [1]. As a result, many countries decided to take restrictive measures and most of them, used lockdowns, as a major step for preventing further expansion of virus. Most of the countries closed international borders and internal movement within the country [2].

Amongst other directions (For example, education was one of the biggest sector effected by lockdown. Over 1.2 billion children were out of the class-rooms) [3], virus effected litigation procedures. For example, in USA, “the Federal Courts have taken a variety of approaches to mitigating the risks of COVID-19. At the trial court level, for example, the U.S. District court for the Southern District of New York announced on March 13, 2020, that it would postpone new civil and criminal jury trials” [4, p.1]. In Georgia, court hearings were organized online, courts increased electronic document submission process and staff started to work distantly [5].

Even before COVID-19 era, it was acknowledged, that “technology is a powerful tool changing the world on a daily basis” [6, p.33]. During lockdown, the role of online meetings have drastically increased, Online meeting platforms became extremely popular throughout the world, e.g. zoom, webex, Microsoft Teams, Google Meet. Facebook announced messenger rooms for up to 50 people usage. [7].

In this process, mediation services had to adapt the modern reality and plan the activities accordingly.

The purpose of this article is to analyze the

possibilities for increasing role of online mediation as the tool for dispute resolution during lockdown. Besides, it will be assessed the problems arising out of online mediation and the possible relevant outcomes to use this period as a lessons learned.

Literature review

This article uses articles and researches of various scientists. The articles are published in reputable law journals. The authors discuss development of online mediation.

Article from Victor Terekhov, “Online Mediation: A Game Changer or Much Ado About Nothing?” focuses on the phenomenon of Online Mediation. The article aims at clarifying the notion of “online mediation”, showing some of the most obvious benefits and drawbacks of this dispute resolution method. [6, p.33].

Article from Sarah Rudolph Cole and Kristen M. Blankley, “Online Mediation: where we have been, where we are now, and where we should be”, proposes to explore questions about cost of online mediation, also, whether online mediation substitutes physical meetings, to what extend online mediation works, and what challenges are essential for dispute resolution process. [8, p. 193-194].

Article from Yuxian Zhao, “Rethinking the limitations of online mediation”, maintains that online mediation, by its unique features, may result in at least the same level of the efficiency with conventional offline mediation. Specifically, the text-based and asynchronous natures of online mediation, together with its easy access to technology, help mediation participants better process information, handle emotions, manage processes, and generate settlement options [9].



More recent article is reviewed from J. Lampe, who is researching specific issues related to COVID-19. Therefore, this article is important as being the one reviewing actual problems caused by pandemic situation in the courts [4].

Aim

Aim of the Article is to analyze past evolution of online mediation. Using online tools for mediation became more actual during lockdown measures, as a result of fast spread of COVID-19 in whole world. Therefore, such analysis will help to assess possibilities for development of online mediation in future.

Methods

In order to analyze the importance of online mediation and possibilities for its further development, comparative method has been used between traditional and online mediation. It is used scientific researches on mediation, which review history and development of mediation, including, online mediation. Besides, it was analyzed modern challenges and situation around world, caused by COVID-19. Systemic method was also used to analyze connection between traditional and online mediations.

Results

Online Mediation can be defined as the procedure, where “the IT tools present the driving force of the whole process and cannot be dispensed with” [6, p.38].

Online Mediation started to be offered in the late 1990s, though it ceased to be an interesting topic in the beginning of 2000s. Though, after that, it started to increase for three main reasons: 1) improved web-technologies; 2) extreme workload of the courts; 3) relocation of most businesses to the web [6, p. 38-39].

In general, “Online Dispute Resolution most commonly resolves e-Commerce or other internet-related disputes” [8, p. 196]. Here, it is even logical and reasonable to use internet, as a tool for efficient dispute resolution tool. Therefore, many businesses involved in e-Commerce use Online Mediation as a mechanism for dispute resolution [6, p.39]. “Moreover, a great number of consumer cases concern relatively small matters (\$5 \$100 in average). While being sensitive to consumers, these disputes are, beyond all doubt, unprepared to offline consideration, as the sole preliminary steps to be taken would consume much of the potential

award. [6, p.42]”

Though, e-Commerce is not the only area where Online Mediation could be efficient mechanism for Dispute Resolution. It started to replace other off-line based disputes [8, p. 196]. “In yet other situations a physical meeting might be possible though highly undesirable as is the case with various kinds of matrimonial and family disputes, especially those involving interpersonal violence or abuse. Here joint mediation is not the wisest solution.” [6, p. 42]

In general, Mediation is based on the following principles:

1) It involves three parties – two parties, who have dispute and the third, neutral part – the Mediator;

2) Non-adjudicatory role of the Mediator – mediator has no power to make decision, he/she is facilitating the process;

3) Flexible and Informal nature of the procedure;

4) Private Origins – it is mainly used for private law relate disputes. Even though, this trend is becoming less and less relevant for the meditation, due to increased number of mediations in public sector, still, the driving sector is private sector for the mediation;

5) Voluntary participation;

6) Mostly face-to-face interaction. [6, p.36]

The goals of mediation have been considered to include the followings:

- Encourage the exchange of information,
- Provide new information,
- Help the parties to understand each other's views,
- Let them know that their concerns are understood,
- Promote a productive level of emotional expression,
- Deal with differences in perceptions and interests between negotiators and constituents (including lawyer and client),
- Help negotiators realistically assess alternatives to settlement,
- Encourage flexibility,
- Shift the focus from the past to the future,
- Stimulate the parties to suggest creative settlements,
- Learn (often in separate sessions with each



party) about those interests the parties are reluctant to disclose to each other, and

- Invent solutions that meet the fundamental interests of all parties. [9, p.168-169]

Of course, the list mentioned above, is not restrictive and is more indicative, but, this could be used as a good comparator between the traditional and online mediation.

Discussion

There has been always many discussions about efficiency of mediation in general. It could be noted, that these discussions has been even increased since development of online mediation.

Therefore, discussions regarding mediation could be divided by two parts: (i) discussion on mediation in general; (ii) discussion on specifically online mediation.

Though, spread of COVID-19 through world and increase of lockdown measures in most countries, force-majeure circumstances and number of disputes, has increased the role of alternative dispute resolution. Moreover, it has increased the importance of online mediation. In most cases, online dispute resolution has even applied in courts and thus, it is obvious, that the applicability of online mediation has been also increased.

As a result of such development, the discussions should be developed within interested groups on how to ensure better efficiency of online mediation in future.

Conclusion

If we compare above-mentioned principles and goals of the traditional mediation, it could be concluded, that Online Mediation is a mechanism, which has almost all the characteristics to achieve the same goals.

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Even though, it doesn't use face-to-face meetings, it could be easily replaced by the meetings by using internet tools.

During the evolution of Online Mediation, it would be hard to predict, that it could have been such relevant to develop Online Mediation tools. Actually, during lockdown, parties who had disputes, had limited choice of Dispute Resolution mechanisms and maybe, it was the very moment for Online Mediation. Parties had limited access on transportation due to lockdown, therefore, they had to use online tools and online

As the world is expecting the further peaks or waves for COVID-19 [10], mediators, relevant associations, judiciary system has to be prepared for next stage. Mediators could promote online mediation as an efficient, fast, less costly and future based tool. It is worth to mention, that internet tools are also adapted more for online sessions, caucuses (It is possible to create separate "room" during the group meeting through various platforms), etc. Therefore, there are less and less reasons to avoid online mediation.

Even more, development of online mediation is must to happen now!

Acknowledgements.

This article will be useful for the professionals interested in mediation. Also, students of the universities will get more information and knowledge on mediation. In addition, as the mediation is new institution in Georgia, article will be important document for increasing awareness on mediation and it should be interesting for wide range of public. Article will be starting point for further discussions on development of online tools for mediation.



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